



REGISTERED MAIL - RETURN RECEIPT REQUESTED

Hideo Nakagawa
1386024 Koizuka
Kumagaya City
Saiparna Prefecture
Japan

Dear Mr. Nakagawa:

The Bureau of Export Administration, United States Department of Commerce (BXA), has reason to believe that, as described below, Hideo Nakagawa violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001))(the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1991 & Supp. And Pub. L. No. 106-508, November 13, 2000))(“Act”)² on two occasions. Specifically, BXA charges that Hideo Nakagawa committed the following violations:

Charge 1: Conspiracy to Export Without Export license: EAR §764.2(d)

From in or about September 1995 through in or about July 1997, Hideo Nakagawa conspired and acted in concert with others to bring about acts that constituted violations of the Regulations, that is exporting goods without the exporter obtaining the required export licenses from the Department of Commerce. The purpose of the conspiracy was for Hideo Nakagawa and his coconspirators to obtain generation II night vision equipment and cause it to be exported to Japan without the exporter obtaining the required licenses from the Department of Commerce. BXA alleges that by conspiring and acting in concert with one or more persons in any manner or for

¹ The Regulations are currently codified in the Code of Federal Regulations at Parts 15 C.F.R. 730-774 (2001). The violation charged occurred in 1997. The Regulations governing the violations are codified at 15 C.F.R. Parts 730-774 (1997). They are substantially the same as the 2001 version of the Regulations which govern the procedural aspects of this case.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (1994 & Supp. IV 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized by Public Law No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.



any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order, or license issued thereunder, Hideo Nakagawa, committed one violation of Section 764.2(d) of the Regulations.

Charge 2: Causing an Unauthorized Export to Japan: EAR Section 764.2(b)

In or about July 1997, Hideo Nakagawa caused to be exported to Japan 100 units of generation II night vision equipment, which were covered by Export Control Classification Number 6A002.c (Supplement 1 of Part 774 of the Regulations), without the export license required from the Department of Commerce. In doing so, BXA alleges that Hideo Nakagawa committed one violation of Section 764.2 (b) of the Regulations.

Accordingly, Hideo Nakagawa is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

A civil penalty of up to \$11,000 for each violation³;

A denial of export privileges; and

Exclusion from practice before BXA.

If Hideo Nakagawa fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of the letter, that failure will be treated as a default. (Regulations, Section 766.6 and 766.7). If Hideo Nakagawa defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to the party that defaulted. The Under Secretary for Export Administration may then impose up to the maximum penalty on each of the charges in this letter.

- Hideo Nakagawa is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. (Regulation, Section 766.6). Hideo Nakagawa, is entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BXA named below.

³ Pursuant to the Federal Civil Penalties Adjustment Act of 1990, (25 U.S.C. 2461, note (1994 & Supp. V 1999)) and 15 C.F.R. §6.4(a)(2) the maximum civil penalty for each violation committed after October 23, 1996 and before November 1, 2006 is \$11,000.

The U.S. Coast Guard provides administrative law judge service in connection with the matters set forth in this letter. Accordingly, Hideo Nakagawa should file an answer pursuant to the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of each answer must be served on BXA at the following address:

Chief Counsel for Export Administration
Attention: Laiold M. Street
Room H-3839
U.S. Department of Commerce
14th Street and Constitution Avenue, N. W.
Washington, D.C. 20230

Please contact Laiold M. Street, at (202) 482-5301, or at the mailing address above, should you have questions concerning this matter.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
Hideo Nakagawa)
1386024 Koizuka)
Kumagaya City)
Saipama Prefecture)
Japan,)
)

Respondent)

SETTLEMENT AGREEMENT BETWEEN HIDEO NAKAGAWA AND
THE BUREAU OF EXPORT ADMINISTRATION

This Settlement Agreement (Agreement) is made by and between Hideo Nakagawa and the Bureau of Export Administration, United States Department of Commerce (BXA), pursuant to Section 766.18(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2001)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (Act).²

¹ The Regulations governing the violations at issue are found in the 1997 version of the Code of Federal Regulations. The Regulations are codified at 15 C.F.R. Parts 730-774 (1997)) and, to the degree to which they pertain to this matter, are substantially the same as the 2001 version.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

WHEREAS, BXA has notified Hideo Nakagawa of its intention to initiate an administrative proceeding against Hideo Nakagawa pursuant to the Act and the Regulations;

WHEREAS, BXA has issued a proposed charging letter to Hideo Nakagawa that alleged that Hideo Nakagawa committed two violations of the Regulations by causing an exportation without the required export license and by conspiring to do so.

WHEREAS, Hideo Nakagawa has reviewed the proposed charging letter and is aware of the allegations made against him and the administrative sanctions which could be imposed against him if the allegations are found to be true;

WHEREAS, Hideo Nakagawa fully understands the terms of this Agreement and the Order that will be issued to give effect to this Settlement Agreement (Order);

WHEREAS, Hideo Nakagawa enters into this Agreement voluntarily and with full knowledge of his rights;

WHEREAS, Hideo Nakagawa states that no promises or representations have been made to him other than the agreements and considerations herein expressed;

WHEREAS, Hideo Nakagawa neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Hideo Nakagawa wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Hideo Nakagawa agrees to be bound by the Order, when entered;

NOW THEREFORE, Hideo Nakagawa and BXA agree as follows:

1. BXA has jurisdiction over Hideo Nakagawa, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. BXA and Hideo Nakagawa agree that the following sanction shall be imposed against Hideo Nakagawa in complete settlement of the alleged violations of the Regulations set forth in the proposed charging letter:

- a. Hideo Nakagawa shall be assessed a civil penalty of \$20,000.
 - b. Hideo Nakagawa shall have his export privileges denied for a period of five years from the date of the order.
 - c. As authorized by Section 766.18(c) of the Regulations, both the payment of the civil penalty and this denial of export privileges shall be suspended for a period of five years from the date of entry of an appropriate Order, and shall thereafter be waived, provided that, during period of suspension, Hideo Nakagawa has committed no violation of the Act, or any regulation, order or license issued thereunder
3. Hideo Nakagawa agrees that, subject to the approval of this Agreement pursuant to paragraph 8 hereof, he hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, when entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, when entered.

4. BXA agrees that, upon entry of the Order, it will not initiate any administrative proceeding against Hideo Nakagawa in connection with any violation of the Act, or the Regulations arising out the transactions identified in the proposed charging letter.

5. Hideo Nakagawa understands that BXA will make the proposed charging letter, this Agreement, and the Order, when entered, available to the public.

6. BXA and Hideo Nakagawa agree that, this Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, BXA and Hideo Nakagawa agree that they may not use this Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

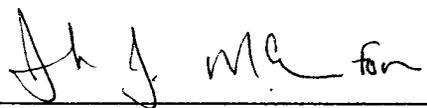
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, when entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BXA only when the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

HIDE0 NAKAGAWA



Mark D. Menefee
Director
Office of Export Enforcement



Hideo Nakagawa

Date: 5/8/02

Date: 04/17/02

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Hideo Nakagawa)
13 86024 Koizuka)
Kumagaya City)
Saipama Prefecture)
Japan,)
)
Respondent.)

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), notified Hideo Nakagawa (“Nakagawa”) of its intention to initiate an administrative proceeding against him pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2002)) (“Regulations”),’ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),’ based on the proposed charging letter issued to Nakagawa that alleged that he violated the Regulations on two occasions. Specifically, the charges are:

¹ The violations charged occurred in 1997. The Regulations governing the violations are codified at 15 C.F.R. Parts 730-774 (1997). The 1997 Regulations are substantially the same as the 2002 Regulations which govern the procedural aspects of this case.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1707 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by a Presidential Notice of August 14, 2002 (67 Fed. Reg. 159 (August 16, 2002)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.

1. *One Violation of 15 C.F.R. § 764.2(d) - Conspiracy to Export Night Vision Scopes Without the Required Export Licenses:* From in or about September 1995 through in or about July 1997, Nakagawa conspired and acted in concert with others to bring about acts that constituted violations of the Regulations; that is, exporting goods without the required export licenses from the Department of Commerce. The purpose of the conspiracy was for Nakagawa and his co-conspirators to obtain generation II night vision equipment and cause it to be exported to Japan without the exporter obtaining the required licenses from the Department of Commerce.
2. *One Violation of 15 C.F.R. §764.2(b): Causing an Unauthorized Export of Night Vision Scopes to Japan:* In or about July 1997, Nakagawa caused to be exported to Japan 100 units of generation II night vision equipment, which were covered by Export Control Classification Number 6A002.c of the Regulations, without the required export licenses from the Department of Commerce.

BIS and Nakagawa having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth herein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$20,000 is assessed against Nakagawa, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order.

Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.

§§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein on, Nakagawa will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Nakagawa. Accordingly, if Nakagawa should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of his export privileges for a period of one year from the date of entry of this Order.

FOURTH, for a period of five years from the date of this Order, Nakagawa, 1386024 Koizuka, Kumagaya City, Saipama Prefecture, Japan, and, when acting for or on behalf of Nakagawa, his representatives, agents and employees (“denied person”), may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to

be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FIFTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is

owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing includes but is not limited to installation, maintenance, repair, modification and testing.

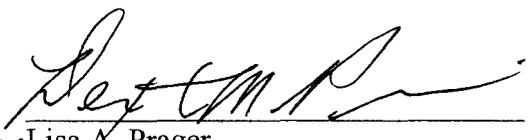
SIXTH, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Hideo Nakagawa by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

SEVENTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

EIGHTH, that, as authorized by Section 766.18(c) of the Regulations, both the civil penalty and the denial period set forth above shall be suspended in their entireties for a period of five years from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Nakagawa has committed no violation of the Act, or any regulation, order, or license issued thereunder.

NINTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



for Lisa A. Prager
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 26th day of August 3 .